

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSE GARCIA, et al.,

Plaintiffs,

- against -

THE CITY OF NEW YORK, et al.,

Defendants.  
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08 Civ. 4274 (RJS)

**ORDER OF WRIT  
AD TESTIFICANDUM**

WHEREAS, Plaintiff Jose Garcia ("Garcia") is an alien (A029 806 012) who was removed from the United States on or about June 12, 2007 and is inadmissible to the United States under at least four provisions of Title 8 of the United States Code, namely sections: 1182(a)(2)(A)(i)(II) (barring admission of any alien who has been convicted of a controlled substance offense); 1182(a)(2)(C) (barring admission of any alien who a consular officer or Department of Homeland Security knows or has reason to believe has been a trafficker in a controlled substance); 1182(a)(6)(C)(i) (barring admission of any alien who has sought admission to the United States by fraud); and 1182(a)(9) (barring admission of any alien who has been removed from the United States within the past five years);

WHEREAS, Immigration Customs Enforcement ("ICE") believes that Garcia poses a danger to the public and a risk of flight;

WHEREAS, pursuant to 8 U.S.C. § 1182(d)(5) and 8 C.F.R. § 212.5(b)(4), Garcia has filed an application for parole into the United States so that he can be present at his civil trial involving claims under 42 U.S.C. § 1983 that is scheduled to begin on November 1, 2010;

WHEREAS, because Garcia's case involves exceptionally unusual circumstances, in the

interest of justice, ICE has agreed to grant Garcia's parole application for the sole purpose of permitting him to attend his trial which is expected to last no more than 10 trial days, on the condition that Garcia is detained at all times that he is within the United States, including but not limited to: (i) upon his arrival in the United States at John F. Kennedy Airport or any other port of entry; (ii) during all periods of his presence in the United States while he attends his trial; (iii) during all periods of transport to and from the Daniel Patrick Moynihan United States District Court, 500 Pearl Street, New York, NY; (iv) during any periods of adjournments of his trial; (v) and during his transportation back to John F. Kennedy Airport (or any other port of departure), up until his actual his departure from the United States; and

WHEREAS, Garcia's counsel Nick Brustin, of Neufeld Scheck & Brustin, has agreed to reimburse the Government for the costs and expenses of Garcia's transportation and detention while he is present in the United States and to be pre-paid \$2,000 to the U.S. Marshal Service to cover anticipated costs of Garcia's detention related expenses;

**IT IS ORDERED**, that, pursuant to 28 U.S.C. § 2241(c)(5):

1. Garcia shall arrange and pay for his travel on a non-stop, direct flight to the United States for purposes of attending his forthcoming trial and for his flight departing the United States as promptly as reasonably possible upon the conclusion of trial.

2. Garcia shall be detained and remain in custody of U.S. Marshal Service throughout his presence in the United States.

3. The U.S. Marshal Service shall:

(i) Apprehend and detain Garcia upon his arrival in the United States;

(ii) Transport Garcia to the United States District Court for the Southern District of New York, Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York;

(iii) Produce Garcia for all pertinent parts of his civil trial, as determined by the Court, that is scheduled to begin on November 1, 2010;

(iv) Detain Garcia during all periods of adjournment of his trial; and


(v) Upon conclusion of the trial, transport Garcia to John F. Kennedy International Airport, and ensure his departure from the United States.

4. Garcia shall provide his travel itinerary to the United States Government 7 days prior to his anticipated date of arrival in the United States by delivery to the U.S. Attorney's Office for the Southern District of New York, Civil Division, c/o AUSA Patricia Buchanan, 86 Chambers Street, New York, NY 10007, and via e-mail, addressed to Patricia.Buchanan@usdoj.gov. The itinerary shall include: (i) departure date; (ii) time of check-in and departure; (iii) airport of departure and confirmation that destination is John F. Kennedy Airport, Queens, New York via a direct non-stop flight; (iv) airline; (v) flight number; and (vi) estimated arrival date and time. Garcia shall provide similar flight information for his departure from the United States.

5. Within 5 days of the entry of this order, Garcia's counsel shall tender a check in the amount of \$2,000 payable to the U.S. Marshals Service as payment for anticipated costs of Garcia's domestic transportation and custody, along with a certified copy of this order and completed USM 285 form, delivered to Ms. Joanne Goodson, Property Management Specialist, U.S. Marshals Service, 500 Pearl Street, Ste. 400, New York, NY 10007. The Government shall use the \$2,000 received from Garcia to defray the costs and expenses it incurs in connection with

Garcia's custody and domestic transportation, and shall refund any portion of the \$2,000 that exceeds the Government's costs and expenses to Garcia's counsel. If the Government's expenses are in excess of \$2,000, within 14 days of his receipt of a bill itemizing the costs and expenses incurred by the Government in connection with Garcia's custody and domestic transportation, Garcia's counsel shall reimburse the Government for any costs and expenses that exceed the \$2,000 pre-payment referenced herein.

SO ORDERED:



Hon. RICHARD J. SULLIVAN  
U.S.D.J.

New York, New York, October 13, 2010